

**From:** [Fugh, Justina](#)  
**To:** [Bachle, Laura](#)  
**Subject:** RE: Any time to talk with me today or tomorrow?  
**Date:** Thursday, June 13, 2019 3:08:00 PM

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Try this:

I have consulted with Justina Fugh, Director of the EPA Ethics Office, and been advised that I cannot participate in this particular funding decision. I must therefore recuse entirely.

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**From:** Bachle, Laura  
**Sent:** Thursday, June 13, 2019 2:54 PM  
**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Subject:** RE: Any time to talk with me today or tomorrow?

Here is what I am going to communicate to my management and peers: "I have been instructed by the Ethics Office that I must recuse my self from this funding decision. I am sorry I cannot provide you with any further details."  
Does that sound ok?

-Laura

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**From:** Fugh, Justina  
**Sent:** Thursday, June 13, 2019 1:03 PM  
**To:** Bachle, Laura <[Bachle.Laura@epa.gov](mailto:Bachle.Laura@epa.gov)>  
**Subject:** RE: Any time to talk with me today or tomorrow?

Hi,

I'm in the office and tomorrow. Today I'm free after 1:30 if that works for you. I'm leaving at 6 pm today, though.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

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**From:** Bachle, Laura  
**Sent:** Thursday, June 13, 2019 10:54 AM  
**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Subject:** Any time to talk with me today or tomorrow?

Hello Justina- I am so sorry to bother you again so soon, but I have a quick question. Not something I can talk over the phone about. If you don't have time, is there someone else I may speak with briefly? It concerns an earlier conversation we had a few months back. Thanks Justina.

-Laura

*Laura Bachle, AICP*

*U.S. Environmental Protection Agency*

*1200 Pennsylvania Avenue, N.W.*

*Washington, DC 20460*

*Desk: (202) 566.2468*

*[bachle.laura@epa.gov](mailto:bachle.laura@epa.gov)*

**From:** [Fugh, Justina](#)  
**To:** [Bachle, Laura](#)  
**Subject:** RE: Laura's Recusal  
**Date:** Wednesday, June 26, 2019 1:56:00 PM  
**Sensitivity:** Confidential

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Isn't your recusal based on future employment? The answer is therefore not at all.

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**From:** Bachle, Laura  
**Sent:** Wednesday, June 26, 2019 1:43 PM  
**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Subject:** RE: Laura's Recusal  
**Sensitivity:** Confidential

Ok. Thanks. At what point may I pick back up on supporting the effort? After the funding decision is made and the funds transferred? -Laura

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**From:** Fugh, Justina  
**Sent:** Wednesday, June 26, 2019 1:38 PM  
**To:** Bachle, Laura <[Bachle.Laura@epa.gov](mailto:Bachle.Laura@epa.gov)>  
**Subject:** RE: Laura's Recusal  
**Sensitivity:** Confidential

As I don't know what she means by "process," I can't opine for you. What you need to know is that a recusal means you can't participate in the particular matter itself. I'll let you brief her on where things are for transition purposes, but you can't offer recommendations or suggestions about next steps or to volunteer to review things.

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**From:** Bachle, Laura  
**Sent:** Wednesday, June 26, 2019 1:15 PM  
**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Subject:** Laura's Recusal  
**Sensitivity:** Confidential

Hello Justina- My branch chief, Lynda Hall, is meeting with me to day at 4pm to discuss my recusal. She wants to touch base on the process for my recusal, not the basis for what she assumes is a conflict of interest. She wants to note a couple process steps. I assume this is ok?

*Laura Bachle, AICP*

*U.S. Environmental Protection Agency*

*1200 Pennsylvania Avenue, N.W.*

*Washington, DC 20460*

*Desk: (202) 566.2468*

*[bachle.laura@epa.gov](mailto:bachle.laura@epa.gov)*

**From:** [Fugh, Justina](#)  
**To:** (b) (6)  
**Subject:** RE: last day at EPA  
**Date:** Sunday, November 20, 2022 9:29:00 PM  
**Attachments:** [Departing EPA for GS non supervisors updated Jan 2022.docx](#)  
[Departing EPA for GS supervisors updated Jan 2022.docx](#)

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Hi Dale,

Congratulations on your new position! As a former EPA employee, you are subject to post-employment statute at 18 USC 207. You cannot represent another, including SunLife, back to EPA on the same specific party matters you worked on personally and substantially by making any communication or appearance with the intent to influence a federal official on that same specific party matter. You may remain “behind the scenes” but cannot represent them to the United States (not just to EPA). This restriction, set forth at 18 USC 207(a)(1) is permanent, meaning for your lifetime or the lifetime of that specific party matter.

I know that you were not a “senior official” for the purposes of the one year cooling off period with EPA, but I don’t know if you were a supervisor or not during your last year of federal service. If so, then you do have a two year cooling off period and cannot represent back on any specific party matter that was pending in your area of responsibility during your last year of federal service. You cannot represent the interests of another back to the United States – again, not just EPA – on the same specific party matter that was pending in your office during your last year, even if you did not work on it yourself, pursuant to 18 USC 207(a)(2). If you were not a supervisory, then you are subject only to the permanent restriction mentioned above. One of the attached guidance documents applies to you: one is for GS supervisors while the other is for non-supervisors.

Good luck with your future endeavors, and feel free to contact us at [ethics@epa.gov](mailto:ethics@epa.gov) if you have any post-employment questions in the future!

Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 | phone 202-564-1786

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**From:** Perry, Dale <Perry.Dale@epa.gov>  
**Sent:** Thursday, November 17, 2022 11:54 AM  
**To:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Cc:** (b) (6)  
**Subject:** last day at EPA

Hi Justina,

Today is my last day at EPA (in fact, I’m leaving at noon) but I wanted to reach out to ask if I had any cooling off period when I leave? Can you please reply using my gmail account copied above? I’m going to work at Sun Life as the Associate VP for Climate Change Risk.

Thank you!

Dale

Dale H. Perry, Ph.D.

Pronouns: she/her ([Learn More](#))

Associate Chief of Staff

Office of Research & Development

Desk: 202-564-7338

Mobile: 202-380-6517



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

UPDATED JANUARY 2022  
FOR GS NON-SUPERVISORY EMPLOYEES

**Ethical Considerations Related to Your Transition Out of EPA**

During your federal service, you have been subject to the Standards of Ethical Conduct for Employees of the Executive Branch and the federal conflict of interest statutes. Although many of these rules will no longer affect you when you leave federal service, you will still be bound by the post-employment restrictions.

This document provides an overview of the most important ethics considerations that you need to know as you transition out of Government service. The relevant statute is 18 U.S.C. § 207, and the implementing regulations are found at 5 C.F.R. Part 2641. Understanding your ethics obligations during and after Government service will help you avoid ethics pitfalls.

**THINGS YOU NEED TO KNOW**  
***BEFORE YOU LEAVE GOVERNMENT SERVICE***

**1. Your ethics obligations begin when you start looking for a job**

You can't participate in official matters that will have a direct and predictable effect on the financial interests of any person or entity with whom you are seeking employment. You may not participate in a "particular matter" having a direct and predictable effect on the financial interests of any person or entity with whom you are seeking or negotiating for employment or with whom you have an agreement for future employment. *See, generally*, 5 CFR Part 2635, Subpart F and 18 USC § 208.

***"Seeking employment" begins when you:***

- directly or indirectly make an unsolicited communication regarding possible employment with any person or entity;
- engage in negotiations with a view toward reaching an agreement regarding possible employment;

- receive a response to a job application or employment proposal indicating an interest in employment discussions; or
- make a response, other than rejection, to an unsolicited communication from any person regarding possible employment with that person.

***“Seeking employment” ends*** when:

- you or the prospective employer reject the possibility of employment and all discussions of possible employment have terminated; or
- two months have elapsed since you sent an unsolicited resume or employment proposal, and you have not received an interest in employment discussions.

*Example 1:* You are contacted by an official of a State Environmental Department in your home state. On the call, he asks if you are interested in a position with the State beginning in the next calendar year. You are currently working on an enforcement action involving the State but are interested in returning to the area at the beginning of the year. You agree to send him your resume for an open position.

*Answer:* Because you are open to the prospect of future employment and have sent your resume for an open position, *you are “seeking employment”* and must immediately disqualify yourself from participating in the pending enforcement action until either you or the State affirmatively rejects the possibility of employment or you leave the EPA to take the position, whichever is *later*.

But just deferring discussions until the foreseeable future may not constitute rejection of an employment possibility. Here are two examples of deferring, with different results:

*Example:* Let’s say you gave a speech to a trade association and afterwards, someone said, “Hey, have you been thinking about what you’re going to do after you retire? My company would be very interested in someone like you.” You say that you aren’t thinking about anything until after you actually retire, so you’ll think about them later.

*Answer:* This response will be considered a rejection.

*Another Example:* But let’s say instead that you know your region is working on an issue that involves that very company, and you responded to the inquiry by saying you cannot discuss future employment while you are working on that issue but you would like to discuss employment with the company when the issue is resolved.

*Answer:* Because you have merely deferred employment discussions until the foreseeable future, you have begun “seeking employment” under the ethics regulations and now cannot work on issue that involves the company. It’s not sufficient that you said you won’t talk to them until after the project is over. You have to deal with the conflicts issue now.

## **2. Don't participate in official matters that affect anyone with whom you are seeking employment**

When you are seeking employment, you can't work personally and substantially on any particular matter that affects (directly and predictably) the financial interest of the prospective employer(s). You have to be careful about particular matters of general applicability as well as particular matters involving specific parties.

If you submitted an unsolicited resume and haven't heard back, then you can't participate in a particular matter that affects the prospective employer as a specific party.

*Example:* You send an application to Smith and Jones, an environmental consulting company. As soon as you send in the application, you can't work on any contract that EPA has with Smith and Jones, can't attend a meeting at which Smith and Jones is present, and can't respond to a rulemaking comment sent in by Smith and Jones.

But you can (under a 2016 revision to the seeking employment rules) participate in a matter of general applicability:

*Example:* You're still waiting to hear from Smith and Jones, the environmental consulting company, regarding the application you sent in last month. You could work on a bid proposal that might be of potential interest to environmental consulting companies like Smith and Jones. You could also work on rulemaking comments sent in by other environmental consulting firms.

But once there's a nibble of interest, then the interests of a prospective employer are imputed to you for the purposes of the federal criminal conflict of interest statute, 18 USC § 208.

*Example:* You are seeking employment with a State, and they say that they want you to come in for an interview. Now you can't work on a rulemaking that affects that State specifically or all of the States as a class. The reason is that the rulemaking (which is a particular matter) has a direct and predictable financial effect on all States, including the one with which you are seeking employment.



The most common way to resolve conflicts issues is to disqualify – or recuse – yourself from participating in the particular matter. To disqualify from participating in a conflicting matter, you should notify the supervisor who makes assignments to you. Oral notice is sufficient, but written notice is wiser, and you should also notify anyone else who may consult with you on these matters.

The need for ***disqualification begins*** when you agree to discuss the prospect of employment with any person -- contractor, company, firm, or someone affected by your duties -- regardless of who makes the first contact. It is also triggered when you send a targeted resume to any person or entity over which you have responsibility in your official duties.

***Disqualification ends*** when you or the prospective employer reject the possibility of employment and all discussions of employment have terminated. Disqualification will also end if you do not hear from the potential employer for two months after sending out an unsolicited resume. Two months of silence after sending out a resume is deemed rejection.

### **3. Don't take official records with you**

Official records must remain in the custody of the Agency. Within Agency guidelines, you may be given permission to remove extra copies of records or other work-related, non-record materials. However, copies of records that are classified or otherwise restricted (such as under the Privacy Act or subject to privilege) must be maintained in accordance with Agency requirements. You may remove personal materials, such as family and personal correspondence, but must be careful not to remove any official records. The United States government has specific authority to enforce recovery of any unlawfully removed, altered or destroyed records. Talk to your records officer.

### **4. Take the post-employment ethics online course**

Take the online post-employment course [Leaving Federal Service](#) and/or talk to your deputy ethics official or your regional ethics counsel.

## **THINGS YOU NEED TO KNOW AFTER YOU LEAVE GOVERNMENT SERVICE**

Even after you leave federal service, you will still be subject to the criminal provisions of 18 USC § 207 and its implementing regulations at 5 CFR Part 2641. If you were a procurement official, you will be subject to the Procurement Integrity Act at 41 USC § 2104, 48 CFR § 3.104. Some of the restrictions depend upon your current rate of pay and your type of your appointment.

## **5. We answer your post employment questions**

If you have a post-employment question, even after leaving EPA, you may contact your deputy ethics official or your regional ethics counsel, or any of us in OGC/Ethics ([ethics@epa.gov](mailto:ethics@epa.gov)).

## **6. Post Employment Restrictions That Apply to All Former Employees**

All former federal employees are subject to the post-employment restrictions, but whether all or just some of the restrictions apply to you will depend on the facts of your specific situation. These are the restrictions that apply to ALL former employees:

### **a) Permanent Bar, 18 USC § 207(a)(1):**

All former federal employees are prohibited forever from representing a third party in an appearance before or communication to, with the intent to influence, any member of the United States government on a particular matter involving specific parties in which they participated personally and substantially while a government employee if the United States still has an interest in the matter. However, this restriction does not prohibit providing "behind the scenes" assistance (except for attorneys). And please note that, in some cases, the District of Columbia may be considered a federal entity under this provision.

If you worked on a "particular matter involving specific parties," then you can't represent another entity back to the government on that same matter. Examples of such matters include an investigation, application, request for a ruling or determination, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The term does not include a rulemaking or other particular matter of general applicability, but would include a notice of intent that is specific to one chemical, for example. Even if a post-employment communication or appearance concerns the same particular matter, the representational bar does not apply unless the United States is a party or has a direct and substantial interest in that matter at the time of the post-employment representation.

"Personal" participation means you and includes the direction or control over a subordinate employee's participation. Your participation is considered "substantial" if your involvement at the time was of significance to the matter. This includes decision-making, review, or recommendation as to the action to be taken.

### **b) One-Year Bar (Trade or Treaty Negotiations), 18 USC § 207(b)**

For one year after leaving Government service, former employees may not knowingly represent, aid, or advise on the basis of covered information, any other person (except the United States) concerning any ongoing trade or treaty negotiation in which, during their last year of government service, they participated personally and substantially as employees.

### **c) Compensation in matters affecting the Government, 18 U.S.C. § 203**

Under this statute, a former employee is prohibited from receiving, either directly or indirectly, any compensation for any “representational services” in connection with any particular matter in which the United States is a party or has a direct and substantial interest. Section 203 applies equally to representational services rendered by you personally or by another person (provided that you share in the compensation for those services), and also prevents the new employer from paying you for any covered representational services that were provided at a time when you were still a Government employee. It does not matter whether or not you provided those representational services.

“Representational services” means communications to or appearances before Federal entities (not just EPA) with the intent to influence the Government on behalf of a third party. Common examples are legal and consulting services.

*Example:* A former EPA attorney joined Dewey, Cheatham and Howe, a prominent law firm with an extensive Federal practice. The former EPA attorney may not share in any fees attributable to representational services provided by the firm while she was still employed by the government. This means that her compensation plan may not include any actual firm profits where such profits derive in any part from covered representational services. In addition, she may not receive a partnership interest that includes a share of fees generated from covered representational services rendered prior to her termination from Government service. Likewise, she may not receive a bonus that is calculated in any part based upon the firm's receipt of such fees.

Similarly, if a former EPA employee joined “K Street Interest Group,” a grassroots lobbying firm, the former employee would have the same restrictions as the attorney in this example.

## **7. Additional Post-Employment Restrictions For Procurement Officials**

### **One-Year Bar in the Procurement Integrity Act, 41 USC § 2104 and 48 CFR § 3.104**

Certain former officials cannot accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within one year after serving as: (1) the procurement contracting officer; (2) the source selection authority; (3) a member of the source selection board; or (4) the chief of the financial or technical evaluation panel of a contract involving payment or claims of over \$10 million.

In order for these rules to apply, you need to have had a formal role in the process. This would include being in a position to make a recommendation or to substantially influence the selection of a contractor or the type of work to be done by the contractor.

## **8. Additional Post-Employment Advice for Officials Involved in Grants**

If you were involved in any grant competition activities while at EPA, then you need to pay attention to post employment implications under EPA's Grants Competition Conflicts of Interest and Competitive Advantage policies. While not strictly statutory or regulatory prohibitions, these policies ensure that EPA can preserve the integrity of its competitions. Applicants competing for EPA awards cannot have an unfair competitive advantage or even the appearance of an unfair advantage.

In considering grant applications, EPA takes into account any familial or other types of relationships with current or former EPA personnel, including those who may have had involvement in the competition while at EPA. If you were involved in certain grant activities, including but not limited to the development, review and preparation of solicitations, then you, your family members or your new employer may be constrained in competing for grants under the solicitations in which you participated.

For more information about grants conflicts of interest and competitive advantage policies, contact Bruce S. Binder, Senior Associate Director for Grants Competition, at [binder.bruce@epa.gov](mailto:binder.bruce@epa.gov).

## **9. Additional Post-Employment Reminder For Lawyers**

### ***Special Note for Lawyers (even if you didn't work at EPA as a lawyer)***

Lawyers are reminded to consult their state bar rules which may differ from 18 USC § 207. Even if you were not working at EPA as an attorney, if you are admitted to practice, then you should review your bar rules. Though the federal post-employment laws permit "behind the scenes" conversations, the American Bar Association (ABA) restricts such communication. ABA Model Rule 1.11(a) permits a former government employee to represent a client in connection with a matter in which the lawyer participated personally and substantially as a "public officer or employee" only if s/he first obtains consent from the appropriate government agency.

The DC Bar is even more restrictive than the ABA. DC Bar rule 1.11(a) prohibits the former employee from accepting employment in connection with a matter which is the same as, or substantially related to, a matter in which the lawyer participated personally and substantially as a public officer or employee. Under this rule, there is no waiver possibility, and the former government lawyer is not permitted even to provide "behind the scenes" work.

For these rules to apply, you do not need to have been classified as an attorney in the government; rather, you need only to have been a government employee who is licensed to practice law. So if you are lawyer working in a non-lawyer job in a program office and decide to leave federal service, you may have additional restrictions set forth by your State bar.

If you were in an attorney position, then please remember that you will have an obligation to

abide by Rule 1.9, Duties to Former Clients, and cannot “switch sides” in the same specific party matter nor reveal client secrets.

#### **10. Post-Employment Exceptions and Waivers**

There are some exceptions and waivers, but because they depend on specific sets of facts, we recommend that you confer with OGC/Ethics or your regional ethics counsel about your own situation. Typical exceptions include:

##### ***Acting on behalf of the US Government***

Former employees can make representations back if they are carrying out official duties on behalf of the United States. For example, the post-employment restrictions do not apply to a former employee who is re-employed by the United States or is called as a witness by Congress. The restrictions do apply, however, to former employees who work for a federal contractor. That work is not deemed to be “an activity on behalf of the United States.”

##### ***Acting As An Elected Official.***

Former employees can make representations back to the federal government if they are carrying out their official duties as an elected official of a State or local government. Please note, however, that this exception applies only to elected officials and not to all employment of State or local governments.

##### ***Employee of A Tribe***

Former employees who are employees of (not contractors) or elected or appointed officials of a tribal organization or inter-tribal consortium can represent the tribe back to the United States, provided that they submit adequate notice to the EPA Administrator and OGC/Ethics. For more information, contact OGC/Ethics.

##### ***Scientific or Technological Information or Expertise***

In some instances (but not for EPA), a former employee may make communications or appearances back to the federal government solely for the purpose of furnishing scientific or technological information in accordance with procedures set forth by the agency or agencies involved. The exception does not extend to nontechnical disciplines such as law, economics or political science.

Unfortunately, at this time EPA does not have any procedures in place to apply this exception. Therefore, to apply this exception, the Administrator would have to publish a certification in the Federal Register stating that the individual has outstanding qualifications in a scientific, technological, or other technical discipline, is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the former employee's participation. To our knowledge, EPA has never invoked this exception.

### ***Testimony***

A former employee may give testimony under oath or make statements required to be made under penalty of perjury. Unless expert opinion testimony is given pursuant to court order, or he is called as a witness by the United States, a former employee may not provide such testimony on a matter on behalf of any other person except the United States or Congress if he is subject to the lifetime prohibition contained in 18 USC §207(a)(1).

**Conclusion:** This is a summary of the major ethics rules that apply to you as you begin to seek employment and after you depart the Executive Branch. *This is not a substitute for ethics advice on your seeking and post-employment activities and is not an ethics opinion.* We strongly recommend that you schedule a meeting with OGC Ethics to receive an opinion on your specific facts and circumstances. If you seek advice from an ethics official, provide the relevant facts, and follow our guidance in good faith, then an ethics opinion may be a mitigating factor in any prosecution should you violate the criminal provisions. Please contact us at [ethics@epa.gov](mailto:ethics@epa.gov). Even after you leave EPA, we are here to answer your questions.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

UPDATED JANUARY 2022  
FOR GS SUPERVISORY EMPLOYEES

**Ethical Considerations Related to Your Transition Out of EPA**

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***"Seeking employment" begins when you:***

- directly or indirectly make an unsolicited communication regarding possible employment with any person or entity;
- engage in negotiations with a view toward reaching an agreement regarding possible employment;
- receive a response to a job application or employment proposal indicating an interest in employment discussions; or

- make a response, other than rejection, to an unsolicited communication from any person regarding possible employment with that person.

***“Seeking employment” ends*** when:

- you, or the prospective employer, reject the possibility of employment and all discussions of possible employment have terminated; or
- two months have elapsed since you sent an unsolicited resume or employment proposal, and you have not received an interest in employment discussions. 5 *CFR* 2635.603(b)(2).

*Example 1:* You are contacted by an official of a State Environmental Department in your home state. On the call, he asks if you are interested in a position with the State beginning in the next calendar year. You are currently working on an enforcement action involving the State but are interested in returning to the area at the beginning of the year. You agree to send him your resume for an open position.

*Answer:* Because you are open to the prospect of future employment and have sent your resume for an open position, *you are “seeking employment”* and must immediately disqualify yourself from participating in the pending enforcement action until either you or the State affirmatively rejects the possibility of employment or you leave the EPA to take the position, whichever is *later*.

But just deferring discussions until the foreseeable future may not constitute rejection of an employment possibility. Here are two examples of deferring, with different results:

*Example:* Let’s say you gave a speech to a trade association and afterwards, someone said, “Hey, have you been thinking about what you’re going to do after you retire? My company would be very interested in someone like you.” You say that you aren’t thinking about anything until after you actually retire, so you’ll think about them later.

*Answer:* This response will be considered a rejection.

*Another Example:* But let’s say instead that you know your region is working on an issue that involves that very company, and you responded to the inquiry by saying you cannot discuss future employment while you are working on that issue but you would like to discuss employment with the company when the issue is resolved.

*Answer:* Because you have merely deferred employment discussions until the foreseeable future, you have begun “seeking employment” under the ethics regulations and now cannot work on issue that involves the company. It’s not sufficient that you said you won’t talk to them until after the project is over. You have to deal with the conflicts issue now.



## 2. Don't participate in official matters that affect anyone with whom you are seeking employment

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*Example:* You are seeking employment with a State, so you can't work on a rulemaking that affects that State specifically or all of the States as a class. The reason is that the rulemaking (which is a particular matter) has a direct and predictable financial effect on all States, including the one with which you are seeking employment.

But you can participate in a matter of general applicability:

*Example:* You're still waiting to hear from Smith and Jones, the environmental consulting company, regarding the application you sent in last month. You could work on a bid proposal that might be of potential interest to environmental consulting companies like Smith and Jones. You could also work on rulemaking comments sent in by other environmental consulting firms.

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### **3. Don't take official records with you**

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Take the online post-employment course [Leaving Federal Service](#) and/or talk to your deputy ethics official or your regional ethics counsel.

## **THINGS YOU NEED TO KNOW AFTER YOU LEAVE GOVERNMENT SERVICE**

Even after you leave federal service, you will still be subject to the criminal provisions of 18 USC § 207 and its implementing regulations at 5 CFR Part 2641. If you were a procurement official, you will be subject to the Procurement Integrity Act at 41 USC § 423(d), 48 CFR § 3.104. Some of the restrictions depend upon your current rate of pay and your type of your appointment.

### **5. We answer your post employment questions**

If you have a post-employment question, even after leaving EPA, you may contact your deputy ethics official or your regional ethics counsel, or any of us in OGC/Ethics ([ethics@epa.gov](mailto:ethics@epa.gov)).

### **6. Post Employment Restrictions That Apply to All Former Employees**

All former federal employees are subject to the post-employment restrictions, but whether all or just some of the restrictions apply to you will depend on the facts of your specific situation. See 18 U.S.C. § 207 and 5 C.F.R. Part 2641. **Here is a brief review of the criminal post-employment restrictions that apply to ALL former employees:**

**a) Permanent Bar, 18 USC § 207(a)(1):**

All former federal employees are prohibited forever from representing a third party in an appearance before or communication to, with the intent to influence, any member of the United States government on a particular matter involving specific parties in which they participated personally and substantially while a government employee if the United States still has an interest in the matter. However, this restriction does not prohibit providing "behind the scenes" assistance (except for attorneys). And please note that, in some cases, the District of Columbia may be considered a federal entity under this provision.

If you worked on a "particular matter involving specific parties," then you can't represent another entity back to the government on that same matter. Examples of such matters include an investigation, application, request for a ruling or determination, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The term does not include a rulemaking or other particular matter of general applicability but would include a notice of intent that is specific to one chemical, for example. Even if a post-employment communication or appearance concerns the same particular matter, the representational bar does not apply unless the United States is a party or has a direct and substantial interest in that matter at the time of the post-employment representation.

"Personal" participation means you and includes the direction or control over a subordinate employee's participation. Your participation is considered "substantial" if your involvement at the time was of significance to the matter. This includes decision-making, review, or recommendation as to the action to be taken.

**b) One-Year Bar (Trade or Treaty Negotiations), 18 USC § 207(b)**

For one year after leaving Government service, former employees may not knowingly represent, aid, or advise on the basis of covered information, any other person (except the United States) concerning any ongoing trade or treaty negotiation in which, during their last year of government service, they participated personally and substantially as employees.

**c) Compensation in matters affecting the Government, 18 U.S.C. § 203**

Under this statute, a former employee is prohibited from receiving, either directly or indirectly, any compensation for any "representational services" in connection with any particular matter in which the United States is a party or has a direct and substantial interest. Section 203 applies equally to representational services rendered by you personally or by another person (provided that you share in the compensation for those services), and also prevents the new employer from paying you for any covered representational services that were provided at a time when you were still a Government employee. It does not matter whether or not you provided those representational services.

"Representational services" means communications to or appearances before Federal entities

(not just EPA) with the intent to influence the Government on behalf of a third party. Common examples are legal and consulting services.

*Example:* A former EPA attorney joined Dewey, Cheatham and Howe, a prominent law firm with an extensive Federal practice. The former EPA attorney may not share in any fees attributable to representational services provided by the firm while she was still employed by the government. This means that her compensation plan may not include any actual firm profits where such profits derive in any part from covered representational services. In addition, she may not receive a partnership interest that includes a share of fees generated from covered representational services rendered prior to her termination from Government service. Likewise, she may not receive a bonus that is calculated in any part based upon the firm's receipt of such fees.

Similarly, if a former EPA employee joined "K Street Interest Group," a grassroots lobbying firm, the former employee would have the same restrictions as the attorney in this example.

## **7. Additional Post-Employment Restriction For Former Supervisors**

### **Two-Year Restriction, 18 U.S.C. § 207(a)(2)**

This restriction applies only if you were a supervisor during your last year of federal service, and is similar to the permanent bar, except that it applies for only two years and covers only those particular matters involving specific parties that were actually pending under your official responsibility in your last year of federal service. This restriction applies only to actual supervisors, not to team leaders. For the purposes of this restriction, it does not matter whether you worked on the particular matter personally and substantially; this restriction applies if the particular matter was pending during your last year of federal service.

*Example:* An Office Director recused herself from participation in a contract award to a company because she owns stock in that company. Upon leaving federal service, she takes a position with that company and now wants to make representations back to the federal government on that same contract. Even though she did not work personally and substantially on the contract given her recusal, she is still barred for two years from making representations on the contractor's behalf back to the federal government.

The definition of "official responsibility" is the "direct administrative or operating authority, whether intermediate or final, and whether exercisable alone or with another, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action." The scope of your "official responsibility" is determined by those areas assigned by statute, regulation, Executive Order, job description or delegation of authority.

For supervisors, "official responsibility" includes all particular matters under consideration in your office or within the responsibility of any of your employees who participate in the matter within the scope of their duties. For a deputy office director, all matters in the office are

deemed to be within her “official responsibility.” For a branch chief, all matters in the branch are deemed to be within official responsibility.

NOTE: Given your type of appointment and pay schedule, you are NOT a former “senior official” for the purposes of 18 USC § 207(c). You do NOT have a one-year cooling off period with EPA.

## **8. Additional Post-Employment Restrictions For Lawyers**

### ***Special Note for Lawyers (even if you didn’t work at EPA as a lawyer)***

Lawyers are reminded to consult their state bar rules which may differ from 18 USC § 207. Even if you were not working at EPA as an attorney, if you are admitted to practice, then you should review your bar rules. Though the federal post-employment laws permit “behind the scenes” conversations, the American Bar Association (ABA) restricts such communication. ABA Model Rule 1.11(a) permits a former government employee to represent a client in connection with a matter in which the lawyer participated personally and substantially as a “public officer or employee” only if he first obtains consent from the appropriate government agency.

The DC Bar is even more restrictive than the ABA. DC Bar rule 1.11(a) prohibits the former employee from accepting employment in connection with a matter which is the same as, or substantially related to, a matter in which the lawyer participated personally and substantially as a public officer or employee. Under this rule, there is no waiver possibility, and the former government lawyer is not permitted even to provide “behind the scenes” work.

For these rules to apply, you do not need to have been classified as an attorney in the government; rather, you need only to have been a government employee who is licensed to practice law. So if you are lawyer working in a non-lawyer job in a program office and decide to leave federal service, you may have additional restrictions set forth by your State bar.

If you were in an attorney position, then please remember that you will have an obligation to abide by Rule 1.9, Duties to Former Clients, and cannot “switch sides” in the same specific party matter nor reveal client secrets.

## **9. Additional Post-Employment Restrictions For Procurement Officials**

### **One-Year Bar in the Procurement Integrity Act, 41 USC § 2104 and 48 CFR § 3.104**

Certain former officials cannot accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within one year after serving as: (1) the procurement contracting officer; (2) the source selection authority; (3) a member of the source selection board; or (4) the chief of the financial or technical evaluation panel of a contract involving payment or claims of over \$10 million.

In order for these rules to apply, you need to have had a formal role in the process. This would include being in a position to make a recommendation or to substantially influence the

selection of a contractor or the type of work to be done by the contractor.

#### **10. Additional Post-Employment Advice for Officials Involved in Grants**

If you were involved in any grant competition activities while at EPA, then you need to pay attention to post employment implications under EPA's Grants Competition Conflicts of Interest and Competitive Advantage policies. While not strictly statutory or regulatory prohibitions, these policies ensure that EPA can preserve the integrity of its competitions. Applicants competing for EPA awards cannot have an unfair competitive advantage or even the appearance of an unfair advantage.

In considering grant applications, EPA takes into account any familial or other types of relationships with current or former EPA personnel, including those who may have had involvement in the competition while at EPA. If you were involved in certain grant activities, including but not limited to the development, review and preparation of solicitations, then you, your family members or your new employer may be constrained in competing for grants under the solicitations in which you participated.

For more information about grants conflicts of interest and competitive advantage policies, contact Bruce S. Binder, Senior Associate Director for Grants Competition, at [binder.bruce@epa.gov](mailto:binder.bruce@epa.gov).

#### **11. Post Employment Exceptions and Waivers**

There are some exceptions and waivers, but because they depend on specific sets of facts, we recommend that you confer with OGC/Ethics about your own situation. Typical exceptions include:

##### ***Acting on behalf of the US Government***

Former employees can make representations back if they are carrying out official duties on behalf of the United States. For example, the post-employment restrictions do not apply to a former employee who is re-employed by the United States or is called as a witness by Congress. The restrictions do apply, however, to former employees who work for a federal contractor. That work is not deemed to be "an activity on behalf of the United States."

##### ***Acting As An Elected Official.***

Former employees can make representations back to the federal government if they are carrying out their official duties as an elected official of a State or local government. Please note, however, that this exception applies only to elected officials and not to all employment of State or local governments.

### ***Employee of A Tribe***

Former employees who are employees of (not contractors) or elected or appointed officials of a tribal organization or inter-tribal consortium can represent the tribe back to the United States, provided that they submit adequate notice to the EPA Administrator and OGC/Ethics. For more information, contact OGC/Ethics.

### ***Scientific or Technological Information or Expertise***

In some instances (but not for EPA), a former employee may make communications or appearances back to the federal government solely for the purpose of furnishing scientific or technological information in accordance with procedures set forth by the agency or agencies involved. The exception does not extend to nontechnical disciplines such as law, economics or political science.

Unfortunately, at this time EPA does not have any procedures in place to apply this exception. Therefore, to apply this exception, the Administrator would have to publish a certification in the Federal Register stating that the individual has outstanding qualifications in a scientific, technological, or other technical discipline, is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the former employee's participation. To our knowledge, EPA has never invoked this exception.

### ***Testimony***

A former employee may give testimony under oath or make statements required to be made under penalty of perjury. Unless expert opinion testimony is given pursuant to court order, or he is called as a witness by the United States, a former employee may not provide such testimony on a matter on behalf of any other person except the United States or Congress if he is subject to the lifetime prohibition contained in 18 USC §207(a)(1).

**Conclusion:** This is a summary of the major ethics rules that apply to you as you begin to seek employment and after you depart the Executive Branch. *This is not a substitute for ethics advice on your seeking and post-employment activities and is not an ethics opinion.* We strongly recommend that you schedule a meeting with OGC Ethics to receive an opinion on your specific facts and circumstances. If you seek advice from an ethics official, provide the relevant facts, and follow our guidance in good faith, then an ethics opinion may be a mitigating factor in any prosecution should you violate the criminal provisions. Please contact us at [ethics@epa.gov](mailto:ethics@epa.gov). Even after you leave EPA, we are here to answer your questions.

**From:** [Mosley, Ferne](#)  
**To:** [Bernagros, Jason](#)  
**Subject:** RE: Question about post EPA restrictions with a new employer  
**Date:** Wednesday, December 15, 2021 4:37:00 PM

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Jason, my pleasure – best wishes for a great holiday season and in your new job.

Ferne

*Ferne L. Mosley, Attorney-Advisor*

Office of the General Counsel/Ethics Office

U.S. Environmental Protection Agency

1200 Pennsylvania Ave, NW WJC Bldg, (North)

Washington, DC 20460

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202-564-8046 (desk)

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**From:** Bernagros, Jason <Bernagros.Jason@epa.gov>  
**Sent:** Wednesday, December 15, 2021 4:17 PM  
**To:** Mosley, Ferne <mosley.ferne@epa.gov>  
**Subject:** RE: Question about post EPA restrictions with a new employer

Hi Ferne,

Thank you for confirming I'm interpreting the guidance that you shared with me correctly ☺. I really appreciate you having taken the time to assist me today and all the other times during my career at EPA.

I hope you have a wonderful holiday season and a happy new year.

-JB

**Jason T. Bernagros (he/him)**

*Urban Planner – Designer, LEED AP BD + C*

**U.S. EPA Office of Research and Development**

**Center for Environmental Solutions and Emergency Response**

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**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Wednesday, December 15, 2021 3:51 PM  
**To:** Bernagros, Jason <[Bernagros.Jason@epa.gov](mailto:Bernagros.Jason@epa.gov)>  
**Subject:** RE: Question about post EPA restrictions with a new employer

Hello, that is not a problem under the post-employment restrictions unless you've had some involvement as an EPA employee in setting the requirements or drafting the RFP, e.g., personally and substantially participating on the proposal as a federal employee. You're correct that, in any event, it will not prevent you from working behind-the-scenes or being listed by the contractor as someone who will be working on the contract should it be awarded.

If you did work on the requirements for a specific contract as an EPA employee, you will not be able to sign the RFP or otherwise represent the entity before any government official. If you did not



personally and substantially work on the RFP, then you are free to appear before or communicate with EPA or any other federal agency on that procurement matter.

Hope that helps,

Ferne

*Ferne L. Mosley, Attorney-Advisor*

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U.S. Environmental Protection Agency

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**From:** Bernagros, Jason <[Bernagros.Jason@epa.gov](mailto:Bernagros.Jason@epa.gov)>

**Sent:** Wednesday, December 15, 2021 3:28 PM

**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>

**Cc:** ethics <[ethics@epa.gov](mailto:ethics@epa.gov)>

**Subject:** RE: Question about post EPA restrictions with a new employer

Hi Ferne,

Thank you very much for your quick and helpful information, I really appreciate it. I was wondering if you knew if there are any restrictions with me assisting my new employer with Federal government RFPs, where I would be possibly listed as a member of a project team but not necessarily the main point of contact for the funding proposal? I know that my new employer does do some Federal work with DoD with some work I may become involved in the future with my new job. It sounds like if I'm doing behind the scenes work on writing funding proposals or working on federally funded projects, it's OK as long as I'm working behind the scenes versus being the main point of contact for federal projects.

Please let me know if it would be easier to explain over Teams or a phone call.

Thank you again for your help, I'm glad to know the Ethics team is available to help me navigate the restrictions I need to be aware of with my new job.

Regards,

**Jason T. Bernagros (he/him)**

Urban Planner – Designer, LEED AP BD + C

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**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>

**Sent:** Wednesday, December 15, 2021 2:55 PM

**To:** Bernagros, Jason <[Bernagros.Jason@epa.gov](mailto:Bernagros.Jason@epa.gov)>

**Cc:** ethics <[ethics@epa.gov](mailto:ethics@epa.gov)>

**Subject:** RE: Question about post EPA restrictions with a new employer

Hello, Jason – yes, there are ethics restrictions if you plan to represent your new employer back to

EPA on specific party matters that you worked on while an EPA employee, if any. I've attached a brief summary of the rules. I'm not sure if you are a supervisor, but if not, you can ignore that section of the summary. Until you depart, you have to make sure that if anything does arise involving your future employer, that you disqualify yourself from participating since you already have an arrangement for future employment.

If you do not plan to appear before or communicate with EPA on behalf of a new employer with the intent to influence government action on the same specific party matters you worked on as an EPA employee, you will not implicate the post-employment rules. We are always available to assist you with an ethics opinion on your post-employment rules after your departure.

Feel free to let me know if you have any other questions.

Good luck in your new position.

Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*

Office of the General Counsel/Ethics Office

U.S. Environmental Protection Agency

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**From:** Bernagros, Jason <[Bernagros.Jason@epa.gov](mailto:Bernagros.Jason@epa.gov)>

**Sent:** Wednesday, December 15, 2021 2:26 PM

**To:** ethics <[ethics@epa.gov](mailto:ethics@epa.gov)>

**Subject:** Question about post EPA restrictions with a new employer

Good afternoon,

My name is Jason Bernagros and I'm in ORD. I'm going to be resigning from EPA at the end of the month to work for an engineering firm called Jacobs in Portland, OR. I was wondering if there are any restrictions that I should be aware of with my new employer? I don't believe my new employer does any business with EPA in the programs that I have been working in (OW and ORD).

Thank you in advance for your guidance.

Regards,

**Jason T. Bernagros (he/him)**

*Urban Planner – Designer, LEED AP BD + C*

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

UPDATED JANUARY 2021  
FOR GS SUPERVISORY EMPLOYEES

**Ethical Considerations Related to Your Transition Out of EPA**

During your federal service, you have been subject to the Standards of Ethical Conduct for Employees of the Executive Branch as well as federal conflict of interest. Although many of these rules will no longer affect you when you leave federal service, you will still be bound by post-employment restrictions.

This document provides an overview of the most important ethics considerations that you need to know as you transition out of Government service. The relevant statute is 18 U.S.C. § 207, and the implementing regulations are found at 5 C.F.R. Part 2641. Having an understanding of your ethics obligations before and after Government service will help you avoid ethics pitfalls.

**THINGS YOU NEED TO KNOW  
BEFORE YOU LEAVE GOVERNMENT SERVICE**

**1. Your ethics obligations begin when you start looking for a job**

You can't participate in official matters that will have a direct and predictable effect on the financial interests of any person or entity with whom you are seeking employment.

***"Seeking employment" begins when you:***

- directly or indirectly make an unsolicited communication regarding possible employment with any person or entity;
- engage in negotiations with a view toward reaching an agreement regarding possible employment;
- receive a response to a job application or employment proposal indicating an interest in employment discussions; or
- make a response, other than rejection, to an unsolicited communication from any person regarding possible employment with that person.

**“Seeking employment” ends** when:

- you, or the prospective employer, reject the possibility of employment and all discussions of possible employment have terminated; or
- two months have elapsed since you sent an unsolicited resume or employment proposal, and you have not received an interest in employment discussions. 5 *CFR* 2635.603(b)(2).

*Example:* You are contacted by an official of a State Environmental Department. In the call, he asks if you are interested in leaving EPA because they have a spot for you. You're flattered, but say that you are very happy with your job at EPA and are not interested in leaving. You add that you will remember his interest if you ever decide to leave the Government.

Because you declined the offer, you have rejected the unsolicited employment overture and have not begun seeking employment.

But just deferring discussions until the foreseeable future may not constitute rejection of an employment possibility. Here are two examples of deferring, with different results:

*Example:* Let's say you gave a speech to a trade association and afterwards, someone said, "Hey, have you been thinking about what you're going to do after you retire? My company would be very interested in someone like you." You say that you aren't thinking about anything until after your last day, so perhaps they can contact you then.

*Answer:* This response will be considered a rejection.

*Another Example:* But let's say instead that you know your region is working on an issue that involves that very company, and you responded to the inquiry by saying you cannot discuss future employment while you are working on that issue but you would like to discuss employment with the company when the issue is resolved.

*Answer:* Because you have merely deferred employment discussions until the foreseeable future, you have begun "seeking employment" under the ethics regulations and now cannot work on issue that involves the company. It's not sufficient that you said you won't talk to them until after the project is over. You have to deal with the conflicts issue now.

## **2. Don't participate in official matters that affect anyone with whom you are seeking employment**

When you are seeking employment, you can't work personally and substantially on any particular matter that affects (directly and predictably) the financial interest of the prospective employer(s). You have to be careful about particular matters of general applicability as well as particular matters involving specific parties. The interests of a prospective employer are imputed to you for the purposes of the federal criminal conflict of interest statute, 18 USC § 208.

*Example:* You are seeking employment with a State, so you can't work on a rulemaking that affects that State specifically or all of the States as a class. The reason is that the rulemaking (which is a particular matter) has a direct and predictable financial effect on all States, including the one with which you are seeking employment.

But you can (under a 2016 revision to the seeking employment rules) participate in a matter of general applicability:

*Example:* You're still waiting to hear from Smith and Jones, the environmental consulting company, regarding the application you sent in last month. You could work on a bid proposal that might be of potential interest to environmental consulting companies like Smith and Jones. You could also work on rulemaking comments sent in by other environmental consulting firms.

But once there's a nibble of interest, then the interests of a prospective employer are imputed to you for the purposes of the federal criminal conflict of interest statute, 18 USC § 208.

*Example:* You are seeking employment with a State, and they say that they want you to come in for an interview. Now you can't work on a rulemaking that affects that State specifically or all of the States as a class. The reason is that the rulemaking (which is a particular matter) has a direct and predictable financial effect on all States, including the one with which you are seeking employment.

The most common way to resolve conflicts issues is to disqualify – or recuse – yourself from participating in the particular matter. To disqualify from participating in a conflicting matter, you should notify the supervisor who makes assignments to you. Oral notice is sufficient, but written notice is wiser, and you should also notify anyone else who may consult with you on these matters.

The need for ***disqualification begins*** when you agree to discuss the prospect of employment with any person -- contractor, company, firm, or someone affected by your duties -- regardless of who makes the first contact. It is also triggered when you send a targeted resume to any person or entity over which you have responsibility in your official duties.

***Disqualification ends*** when you or the prospective employer reject the possibility of employment and all discussions of employment have terminated. Disqualification will also end if you do not hear from the potential employer for two months after sending out an unsolicited resume. Two months of silence after sending out a resume is deemed rejection.

### **3. Don't take official records with you**

Official records must remain in the custody of the Agency. Within Agency guidelines, you may be given permission to remove extra copies of records or other work-related, non-record

materials. However, copies of records that are classified or otherwise restricted (such as under the Privacy Act or subject to privilege) must be maintained in accordance with Agency requirements. You may remove personal materials, such as family and personal correspondence, but must be careful not to remove any official records. The United States government has specific authority to enforce recovery of any unlawfully removed, altered or destroyed records. Talk to your records officer.

#### **4. Take the post employment ethics online course**

See: <https://intranet.epa.gov/ogc/LFS/10.html> or talk to OGC/Ethics or your regional ethics counsel.

### **THINGS YOU NEED TO KNOW AFTER YOU LEAVE GOVERNMENT SERVICE**

Even after you leave federal service, you will still be subject to the criminal provisions of 18 USC § 207 and its implementing regulations at 5 CFR Part 2641. If you were a procurement official, you will be subject to the Procurement Integrity Act at 41 USC § 423(d), 48 CFR § 3.104. Some of the restrictions depend upon your current rate of pay and your type of your appointment.

#### **1. We answer your post employment questions**

If you have a post employment question, even after leaving EPA, you may contact your regional ethics counsel or any of us in OGC/Ethics. To reach OGC/Ethics, contact us collectively at [ethics@epa.gov](mailto:ethics@epa.gov) or individually as follows:

James Payne, Designated Agency Ethics Official, [payne.james@epa.gov](mailto:payne.james@epa.gov)

Justina Fugh, Director, Ethics Office, (202) 564-1786 or [fugh.iustina@epa.gov](mailto:fugh.iustina@epa.gov)

Victoria Clarke, Ethics Attorney, (202) 564-1149 or [clarke.victoria@epa.gov](mailto:clarke.victoria@epa.gov)

Shannon Griffo, Ethics Attorney, (202) 564-7061 or [griffo.shannon@epa.gov](mailto:griffo.shannon@epa.gov)

Ferne Mosley, Ethics Attorney, (202) 564 8046 or [mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

Jennie Keith, Ethics Officer, (202) 564-3412 or [keith.jennie@epa.gov](mailto:keith.jennie@epa.gov)

Margaret Ross, Ethics Officer, (202) 564-3221 or [ross.margaret@epa.gov](mailto:ross.margaret@epa.gov)

#### **2. Post-Employment Restrictions That Apply to All Former Employees**

All former federal employees are subject to the permanent bar, the two-year bar, the one-year bar, and procurement integrity restrictions, though whether all of these restrictions apply to you will depend on the facts of your specific situation. Here is a brief review of the restrictions that apply to ALL former employees:

**a) Permanent Bar, 18 USC § 207(a)(1):**

All former federal employees are prohibited forever from representing a third party in an appearance before or communication to, with the intent to influence, any member of the United States government on a particular matter involving specific parties in which they participated personally and substantially while a government employee if the United States still has an interest in the matter. However, this restriction does not prohibit providing "behind the scenes" assistance (except for attorneys). And please note that, in some cases, the District of Columbia may be considered a federal entity under this provision.

If you worked on a "particular matter involving specific parties," then you can't represent another entity back to the government on that same matter. Examples of such matters include an investigation, application, request for a ruling or determination, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The term does not include a rulemaking or other particular matter of general applicability, but would include a notice of intent that is specific to one chemical, for example. Even if a post-employment communication or appearance concerns the same particular matter, the representational bar does not apply unless the United States is a party or has a direct and substantial interest in that matter at the time of the post-employment representation.

"Personal" participation means you and includes the direction or control over a subordinate employee's participation. Your participation is considered "substantial" if your involvement at the time was of significance to the matter. This includes decision-making, review, or recommendation as to the action to be taken.

**b) One-Year Bar (Trade or Treaty Negotiations), 18 USC § 207(b)**

For one year after leaving Government service, a former employee may not knowingly represent, aid, or advise on the basis of covered information, any other person (except the United States) concerning any ongoing trade or treaty negotiation in which, during his last year of Government service, he participated personally and substantially as an employee.

**c) Compensation in matters affecting the Government, 18 U.S.C. § 203**

Under this statute, a former employee is prohibited from receiving, either directly or indirectly, any compensation for any "representational services" in connection with any particular matter in which the United States is a party or has a direct and substantial interest. Section 203 applies equally to representational services rendered by you personally or by another person (provided that you share in the compensation for those services), and also prevents the new employer from paying you for any covered representational services that were provided at a time when you were still a Government employee. It does not matter whether or not you provided those representational services.

"Representational services" means communications to or appearances before Federal entities (not just EPA) with the intent to influence the Government on behalf of a third party. Common examples are legal and consulting services.

*Example:* A former EPA attorney joined Dewey, Cheatham and Howe, a prominent law firm with an extensive Federal practice. The former EPA attorney may not share in any fees attributable to representational services provided by the firm while the individual was still employed by the government. This means that his or her compensation plan may not include any actual firm profits where such profits derive in any part from covered representational services. In addition, the former EPA attorney may not receive a partnership interest that includes a share of fees generated from covered representational services rendered prior to his or her termination from Government service. Likewise, the former EPA attorney may not receive a bonus that is calculated in any part based upon the firm's receipt of such fees.

Similarly, if a former EPA employee joined "K Street Interest Group," a grass-roots lobbying firm, the former employee would have the same restrictions as the attorney in this example.

### **3. Additional Post-Employment Restriction For Former Supervisors**

#### **Two Year Restriction, 18 U.S.C. § 207(a)(2)**

This restriction applies only if you were a supervisor during your last year of federal service. If you were not a supervisor, then skip this paragraph.

This restriction is similar to the permanent bar, except that it applies for only two years and covers only those particular matters involving specific parties that were actually pending under your official responsibility in your last year of federal service. This restriction applies only to actual supervisors, not to team leaders. For the purposes of this restriction, it does not matter whether you worked on the particular matter personally and substantially; this restriction applies if the particular matter was pending during your last year of federal service.

*Example:* An Office Director recused herself from participation in a contract award to a company because she owns stock in that company. Upon leaving federal service, she takes a position with that company and now wants to make representations back to the federal government on that same contract. Even though she did not work personally and substantially on the contract given her recusal, she is still barred for two years from making representations on the contractor's behalf back to the federal government.

The definition of "official responsibility" is the "direct administrative or operating authority, whether intermediate or final, and whether exercisable alone or with another, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action." The scope of your "official responsibility" is determined by those areas assigned by statute, regulation, Executive Order, job description or delegation of authority.

For supervisors, "official responsibility" includes all particular matters under consideration in your office or within the responsibility of any of your employees who participate in the matter within the scope of their duties. For a deputy office director, all matters in the office are deemed to be within her "official responsibility." For a branch chief, all matters in the branch are deemed



to be within official responsibility.

NOTE: Given your type of appointment and pay schedule, you are NOT a former “senior official” for the purposes of 18 USC § 207(c). You do NOT have a one year cooling off period with EPA.

#### **4. Additional Post-Employment Restrictions For Lawyers**

##### ***Special Note for Lawyers (even if you didn’t work at EPA as a lawyer)***

Lawyers are reminded to consult their state bar rules which may differ from 18 USC § 207. Even if you were not working at EPA as an attorney, if you are admitted to practice, then you should review your bar rules. Though the federal post-employment laws permit “behind the scenes” conversations, the American Bar Association (ABA) restricts such communication. ABA Model Rule 1.11(a) permits a former government employee to represent a client in connection with a matter in which the lawyer participated personally and substantially as a “public officer or employee” only if he first obtains consent from the appropriate government agency.

The DC Bar is even more restrictive than the ABA. DC Bar rule 1.11(a) prohibits the former employee from accepting employment in connection with a matter which is the same as, or substantially related to, a matter in which the lawyer participated personally and substantially as a public officer or employee. Under this rule, there is no waiver possibility, and the former government lawyer is not permitted even to provide “behind the scenes” work.

For these rules to apply, you do not need to have been classified as an attorney in the government; rather, you need only to have been a government employee who is licensed to practice law. So if you are lawyer working in a non-lawyer job in a program office and decide to leave federal service, you may have additional restrictions set forth by your State bar.

If you were in an attorney position, then please remember that you will have an obligation to abide by Rule 1.9, Duties to Former Clients, and cannot “switch sides” in the same specific party matter nor reveal client secrets.

#### **5. Additional Post-Employment Restrictions For Procurement Officials**

##### **One-Year Bar in the Procurement Integrity Act, 41 USC § 2104 and 48 CFR § 3.104**

Certain former officials cannot accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within one year after serving as: (1) the procurement contracting officer; (2) the source selection authority; (3) a member of the source selection board; or (4) the chief of the financial or technical evaluation panel of a contract involving payment or claims of over \$10 million.

In order for these rules to apply, you need to have had a formal role in the process. This would include being in a position to make a recommendation or to substantially influence the selection of a contractor or the type of work to be done by the contractor.

#### **6. Additional Post-Employment Advice for Officials Involved in Grants**

If you were involved in any grant competition activities while at EPA, then you need to pay attention to post employment implications under EPA’s Grants Competition Conflicts of Interest and Competitive Advantage policies. While not strictly statutory or regulatory prohibitions, these

policies ensure that EPA can preserve the integrity of its competitions. Applicants competing for EPA awards cannot have an unfair competitive advantage or even the appearance of an unfair advantage.

In considering grant applications, EPA takes into account any familial or other types of relationships with current or former EPA personnel, including those who may have had involvement in the competition while at EPA. If you were involved in certain grant activities, including but not limited to the development, review and preparation of solicitations, then you, your family members or your new employer may be constrained in competing for grants under the solicitations in which you participated.

For more information about grants conflicts of interest and competitive advantage policies, contact Bruce S. Binder, Senior Associate Director for Grants Competition, at [binder.bruce@epa.gov](mailto:binder.bruce@epa.gov).

## **7. Post Employment Exceptions and Waivers**

There are some exceptions and waivers, but because they depend on specific sets of facts, we recommend that you confer with OGC/Ethics about your own situation. Typical exceptions include:

### ***Acting on behalf of the US Government***

Former employees can make representations back if they are carrying out official duties on behalf of the United States. For example, the post-employment restrictions do not apply to a former employee who is re-employed by the United States or is called as a witness by Congress. The restrictions do apply, however, to former employees who work for a federal contractor. That work is not deemed to be “an activity on behalf of the United States.”

### ***Acting As An Elected Official.***

Former employees can make representations back to the federal government if they are carrying out their official duties as an elected official of a State or local government. Please note, however, that this exception applies only to elected officials and not to all employment of State or local governments.

### ***Employee of A Tribe***

Former employees who are employees of (not contractors) or elected or appointed officials of a tribal organization or inter-tribal consortium can represent the tribe back to the United States, provided that they submit adequate notice to the EPA Administrator and OGC/Ethics. For more information, contact OGC/Ethics.

### ***Scientific or Technological Information or Expertise***

In some instances (but not for EPA), a former employee may make communications or appearances back to the federal government solely for the purpose of furnishing scientific or technological information in accordance with procedures set forth by the agency or agencies involved. The exception does not extend to nontechnical disciplines

such as law, economics or political science.

Unfortunately, at this time EPA does not have any procedures in place to apply this exception. Therefore, to apply this exception, the Administrator would have to publish a certification in the Federal Register stating that the individual has outstanding qualifications in a scientific, technological, or other technical discipline, is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the former employee's participation. To our knowledge, EPA has never invoked this exception.

### ***Testimony***

A former employee may give testimony under oath or make statements required to be made under penalty of perjury. Unless expert opinion testimony is given pursuant to court order, or he is called as a witness by the United States, a former employee may not provide such testimony on a matter on behalf of any other person except the United States or Congress if he is subject to the lifetime prohibition contained in 18 USC §207(a)(1).